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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,980	02/16/2001	Anthony John Bell	5641C1-07-LAV	5253
29668	7590	09/20/2004	EXAMINER	
PFIZER, INC. 201 TABOR ROAD MORRIS PLAINS, NJ 07950			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,980

Applicant(s)

BELL ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 46-54 is/are pending in the application.
- 4a) Of the above claim(s) 10-27 and 46-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 28-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 18, 2004 has been entered. Claims 37-45 have been cancelled. Claims 1-36 and 46-54 are pending in the application. Claims 10-27 and 46-54 were withdrawn from further consideration as being directed to a non-elected invention.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-9, 28, 29, 31-36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Katsuragi et al. (EP 07332064 A1). See Abstract, Page 3, lines 9-13, Page 3, line 58 to Page 4, line 5, Page 4, lines 25-47.

4. Claims 1, 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheu et al. (US 4698232).

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5. Sheu et al. teach a composition *comprising* an amorphous confectionery base with a botanical (e.g. fiber, which is derived from a plant source and used in the human diet) and includes from 1.25-5% of a hydrogenated palm oil (i.e. at 5-25% of a fiber/oil mixture, which is 25-45% of the total composition) to suppress an unpleasant mouthfeel (Column 1, lines 13-61, Column 2, lines 3-38, Column 3, lines 13-47, Claims 1-6).

6. Claims 1, 4-9, 28, and 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Carpenter et al. (US 5637344).

7. Carpenter et al. teach making a hard boiled in an amorphous or glassy state with a botanical having an unpleasant mouthfeel (i.e. cocoa powder, which is derived from a plant source and used in the human diet) with a range of hydrogenated soybean oil or cocoa butter within 0.5-5% (i.e. less than 5% and preferably 3-5%) to provide a desired mouthfeel, wherein the range of oil to botanical ratio includes 1.0/1.5 to 1.0/1.6 (Column 1, lines 27-31, 40-49, Column 2, lines 8-60, Column 6, line 58 to Column 7, line 7, Column 7, lines 37-45 Column 8, line 61 to Column 9, line 5, and Column 9, lines 15-29).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1) in view of Raymont (AU 9671904 A).

Katsuragi et al. teach Ginkgo biloba added to troches, but are silent in teaching a hard candy with Echinacea. Raymont is relied on as evidence of the conventionality of adding ginkgo biloba and Echinacea to lozenges/troches, and further teach Echinacea provides immune system benefits (Page 3, lines 10-31, Page 5, line 22). Therefore, to include Echinacea would have been an obvious matter of choice, depending on the desired benefit of the botanical (e.g. improving the immune system) and one would have been substituting one conventional botanical for another for the same purpose: providing a medical benefit in a hard candy form.

Response to Arguments

10. Applicant's arguments filed April 28, 2004 with respect to the rejection of claims 1, 2, 4, 6-9 made under 35 U.S.C. 102(e) as being clearly anticipated by Cherukuri et al. (US 6482465 B1) have been fully considered in light of the amendment and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

11. Applicant's arguments filed April 28, 2004 with respect to the rejection of claims 1, 2, 4-9, 28, 29, 31-36 under 35 U.S.C. 102(b) as being clearly anticipated by Katsuragi et al. (EP 0732064 A1) and the rejection of claims 3 and 30 made under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1) in view of Raymont (AU 9671904 A) have been fully considered, but are not persuasive.

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12. Katsuragi teaches (1) "a bitterness-relieving agent which *comprises* an ester", which would not exclude components other than the ester (Page 3, line 3 and Claim 1), (2) the ester is formed by reacting mono or diglycerides and a triglyceride contained therein (Page 3, lines 9-20), (3) the ester may be present with not more than 80% of other components (Page 3, lines 39-43), (4) "it is also possible to dissolve the above-mentioned ester in an edible oil (triglyceride) before using" (Page 3, line 58 to Page 4, line 5), and (5) the bitterness-relieving agent is 0.01-10% of a medical composition (Page 4, lines 43-47). Thus, the term "bitterness-relieving agent" encompasses (1) the ester plus triglycerides (not more than 80% triglycerides) after the reaction or (2) the ester dissolved in triglycerides (not more than 80% triglycerides). Additionally, the agent is 0.01-10% of the medicinal composition, and even if the percentage refers to the ester only, the ester may be combined with not more than 80% oil, which would be the equivalent to 0.04-40% oil in the medicinal composition, wherein the oil with the dissolved ester would be in an effective amount.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Strumor et al. teach hard boiled candy with Echinacea (US 6149939).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700